

NJDEP's Newly Adopted Amendments to Ground Water Quality Standards Will Significantly Impact Ongoing Remediation Projects in New Jersey

What You Need to Know

The New Jersey Department of Environmental Protection (NJDEP) has amended the Ground Water Quality Standards (GWQS), effective on February 3, 2025. The rule, as adopted, does not differ substantially from the January 2024 rule proposal.

The new GWQS updated the specific ground water quality criteria and/or practical quantitation levels (PQLs) for 72 constituents of Class II-A ground water. While ground water quality criteria represent cleanup standards, PQLs represent the lowest concentrations reliably detectable under routine laboratory conditions. If a compound's ground water quality criterion is lower than its PQL-meaning the cleanup level is lower than what a laboratory is expected to reliably detect-then only the PQL must be met.

50 of the 73 newly adopted standards are more stringent than before, including the following common ground water contaminants:

Current

Proposed

Current

Proposed

PCE

1.0 ug/l

0.40 ug/l

Benzene

1.0 ug/l

0.45 ug/l

TCE

1.0 ug/l

0.28 ug/l

Ethylbenzene

700 ug/l

150 ug/l

PCBs

0.5 ug/l

0.20 ug/l

Vinyl Chloride

1.0 ug/l

0.035 ug/l

Potential Impact on Ongoing Remediation Projects

These new remediation standards are expected to have a major impact on ongoing and future site remediation projects. One expected consequence of the more stringent standards is that more ground water will be considered "impacted" by contamination. For instance, under the former remediation standards, PCE impacts to ground water would have to be delineated outward until the levels in ground water dropped down to 1.0 ug/l. But this would be incomplete under the new standard, and a remediating party would be required to continue delineating the ground water out to 0.4 ug/l, meaning a greater area and volume of ground water would be considered impacted. As a result, remediation will be required for a greater quantity of ground water than would have been required under the former standards. This will result in significantly higher costs and longer times to complete both the investigation and remediation of ground water.

Grandfathering Provisions

Notably, New Jersey law has a grandfathering provision which may be available to existing site remediation cases. Specifically, when new remediation standards such as these are adopted, N.J.A.C. 7:26D-7.2(e) permits a remediating party to use the prior standards, provided the following conditions are all met:

Parties conducting remediation projects can take advantage of this grandfathering provision for most of the new remediation standards. Yet, the old remediation standards for the following seven compounds do not meet the third condition above (order of magnitude), and therefore, grandfathering is not available:

1,1 biphenyl

Heptachlor epoxide

Cobalt

Methoxychlor

Cyanide (free)

Vinyl chloride

1,3-dichlorobenzene (meta)

Potential Impact on Valid NFAs and RAOs

New Jersey's Brownfield and Contaminated Site Remediation Act (the Brownfield Act) contains protections for parties conducting remediation, including preventing NJDEP from reopening a valid No Further Action (NFA) or Response Action Outcome (RAO) determination, or an approved RAWP after new remediation standards are adopted.

One such protection is prohibiting NJDEP from reopening an NFA or RAO and requiring additional remediation on a closed site unless the current on-site concentrations exceed a new standard by an order of magnitude (10x) or more.

For example, in late 2023 an LSRP would have properly issued an RAO related to the remediation of ground water impacted by vinyl chloride down to a level of 0.99 ug/l. But now, barely more than one year later, NJDEP is empowered to re-open the case and require additional delineation and remediation all the way down to the new remediation standard of 0.035 ug/l (except in the unlikely event the ground water at that site had already degraded on its own to less than 0.35 ug/l).

The Brownfield Act prohibits a reopener if the responsible party can demonstrate "the existing engineering or institutional controls on the site prevent exposure to the contamination and that the site remains protective of public health, safety and the environment". However, this may be difficult to prove given New Jersey's Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules already deem that if the order of magnitude test is met, a remedial action is not "protective of the public health, safety and the environment."

Notably, the biennial certification process required for a ground water remedial action permit requires the LSRP to determine whether any order of magnitude exceedances are present on a site.

Potential Impact on Approved RAWPs

The Brownfield Act protects parties operating under an approved RAWP from the imposition of new cleanup standards unless the new cleanup standards are made more stringent by an order of magnitude or more. As a result, for the seven compounds listed above, NJDEP is permitted to "move the goalposts" by reopening approved RAWPs and requiring additional delineation and remediation to the new remediation standards.

This is especially problematic for vinyl chloride. Public comment on the rule proposal identified that there were, at the time, 1,810 known ongoing RAWPs involving vinyl chloride. Also, even if vinyl chloride was never discharged at a site, it nevertheless can appear in ground water as a "breakdown product" resulting from the successful remediation of other compounds. In response, NJDEP acknowledged that is the correct amount of RAWPs subject to reopeners and further stated that if vinyl chloride did appear at any site at levels exceeding the new standards due to breakdown of more complex contaminants, then those vinyl chloride exceedances would also require remediation.

Every person conducting a remediation of ground water in New Jersey or considering the purchase of real property with ground water contamination should be aware of these new regulations. A full copy of the NJDEP's rule adoption is available [here](#).

Please contact the author of this Alert with questions related to the NJDEP's rule adoption or to discuss any possible impacts these new requirements may have on your projects.

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